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E-FILED ON APRIL 14, 2006

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

15 In re:  
16 USA COMMERCIAL MORTGAGE COMPANY,  
17 Debtor

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18 In re:  
19 USA SECURITIES, LLC,  
20 Debtor

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21 In re:  
22 USA CAPITAL REALTY ADVISORS, LLC,  
23 Debtor

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24 In re:  
25 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
26 Debtor

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27 In re:  
28 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
29 Debtor

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30 Affects:  
31  All Debtors  
32  USA Commercial Mortgage Company  
33  USA Securities, LLC  
34  USA Capital Realty Advisors, LLC  
35  USA Capital Diversified Trust Deed Fund, LLC  
36  USA First Trust Deed Fund, LLC

Case Nos. BK-S-06-  
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## Chapter 11

DEBTORS' MOTION FOR ORDER  
AUTHORIZING (I) THE EMPLOYMENT  
AND RETENTION OF MESIROW  
FINANCIAL INTERIM  
MANAGEMENT, LLC AS CRISIS  
MANAGERS FOR THE DEBTORS,  
AND (II) THE DESIGNATION OF  
THOMAS J. ALLISON OF MESIROW  
FINANCIAL INTERIM  
MANAGEMENT, LLC AS CHIEF  
RESTRUCTURING OFFICER FOR  
THE DEBTORS AND THE  
EMPLOYMENT OF CERTAIN  
TEMPORARY EMPLOYEES

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Date:  
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The above-captioned debtors and debtors-in-possession (each a "Debtor" and collectively, the "Debtors"), hereby respectfully seek the issuance and entry of an order pursuant to section 363(b) of title 11 of the United States Code (the "Bankruptcy Code"), authorizing (i) the employment and retention of Mesirow Financial Interim Management, LLC ("MFIM") as crisis managers to the Debtors, and (ii) the designation of Thomas J. Allison of MFIM as Chief Restructuring Officer of the Debtors and the employment of certain temporary employees provided by MFIM (the "Temporary Employees"). The Debtors seek to employ and pay compensation to MFIM pursuant to the terms of the Agreement (as defined below). In support of this Motion, the Debtors rely on the accompanying Affidavit of Thomas J. Allison of MFIM (the "Allison Affidavit"), which is filed herewith. In further support of this Motion, the Debtors respectfully represent as follows:

#### INTRODUCTION AND JURISDICTION

1. On April 13, 2006 (the "Petition Date"), the Debtors commenced their reorganization case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

2. Since the commencement of this case, the Debtors have operated their business as debtors-in-possession in accordance with 11 U.S.C. §§ 1107 and 1108 of the Bankruptcy Code.

3. This Court has jurisdiction over this motion under 28 U.S.C. § 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §157.

4. The statutory predicate for the relief requested herein is section 363(b) of the Bankruptcy Code.

#### BACKGROUND OF DEBTORS

5. The Debtors are Nevada corporations with their principal place of business located at 4484 S. Pecos Las Vegas Nevada. The USA Capital group of companies operates in the

1 commercial mortgage business. USA Realty Advisors, LLC ("USARA") is the sole manager of  
 2 two investment funds, USA Capital First Trust Deed Fund, LLC and USA Diversified Trust Deed  
 3 Fund, LLC (the "Funds"). USA Securities, LLC ("USASA") served as a sales agent for the  
 4 investments. USA Commercial Mortgage Company ("USACM") is the service agent for the  
 5 Funds. In addition, USACM originates commercial mortgages, underwrites loans and services the  
 6 various loans for other investors.

7       6. The commercial mortgages, in which the Funds and the individual investors, are  
 8 high risk, high interest rate loans secured in most cases with real estate and property under  
 9 development. Over the past several years, as the borrowers paid interest and repaid principal, the  
 10 Funds and the investors were paid their interest on a monthly basis. Unfortunately, over the past  
 11 year, several of the borrowers did not make their interest payments and are in default under the  
 12 loan provisions. USACM does not have a collection department to oversee these delinquent loans.

13       7. Even as more borrowers became delinquent in their interest and principal  
 14 payments, USACM continued to disburse funds from collections and from its own cash reserves to  
 15 the investors and the Funds in payment of their interest in the loans. By the beginning of April,  
 16 2006, USACM could no longer make the interest payments to the investors and the Funds based  
 17 upon collections from the borrowers and other sources of funds. The interest payment due on  
 18 April 10<sup>th</sup> was not made.

19       8. The Securities and Exchange Commission is currently conducting an investigation  
 20 of the operations of the USA Capital First Trust Deed Fund, LLC, an entity registered with the  
 21 SEC. The SEC is investigating possible violations of the federal securities laws by USA Capital  
 22 First Trust Deed Fund, LLC, its manager, USASA, and its loan servicer USACM. The Debtors  
 23 are cooperating fully with the investigation.

24       **BACKGROUND OF MFIM EMPLOYMENT AND RELIEF REQUESTED**

25       9. The Debtors seek to retain MFIM as crisis managers under Section 363 of the  
 26 Bankruptcy Code and to designate Thomas J. Allison of MFIM as the Chief Restructuring Officer  
 27 of the Debtors (the "CRO"). Certain Temporary Employees of MFIM will assist MFIM and the  
 28 CRO in the performance of the required services. The Engagement Letter and Indemnification

1 Agreement (the "Agreement") entered into between the Debtors and MFIM is attached to the  
 2 Allison Affidavit as Exhibit A.

3       10. The CRO will have complete and exclusive charge of the management and  
 4 operation of the Debtor's business, including hiring and firing employees and agents, paying the  
 5 wages and other compensation of all of the Debtors' employees and agents, and controlling all  
 6 bank accounts and financial affairs of the Debtors including the authority to open and close all  
 7 bank and investment accounts, paying all bills, expenses and other charges incurred or payable  
 8 with respect to the operation of the Debtors' business. MFIM has extensive experience and  
 9 extensive knowledge in the field of insolvency and reorganization cases and provides interim  
 10 management services to financially distressed and troubled companies.

11       11. The professional services that MFIM, the CRO and the Temporary Employees will  
 12 render include the following:

- 13       a. Develop and implement case management strategies, tactics and later develop a plan of  
 14 reorganization;
- 15       b. Manage the professionals who are advising and assisting the Debtors in their  
 16 reorganization process to ensure the individual work product is consistent with the  
 17 Debtors' overall restructuring goals;
- 18       c. Lead management with the development of a business plan, and such other related  
 19 forecasts as may be required by the Debtors to support the reorganization and related  
 20 negotiations with stakeholders;
- 21       d. Communicate and/or negotiate with creditors, their advisors, and other outside  
 22 stakeholders;
- 23       e. Serve as the representative for the Debtors during communications with the Securities  
 24 and Exchange Commission and the Nevada Mortgage Lending Division;
- 25       f. Provide the Debtors with any Investigative Services, Accounting Analyses,  
 26 and Transaction Tracing, as may be deemed necessary or appropriate;
- 27       g. Supervise the preparation of periodic reporting required by the Bankruptcy Court  
 28 and/or the US Trustee, manage the claim reconciliation process, and provide testimony  
 before the Bankruptcy Court on matters that are within MFIM's area of expertise; and  
 render such other service as may be deemed necessary as part of the reorganization  
 process; and

h. Such other necessary or appropriate services as may be agreed to by the Debtors and MFIM.

12. Although MFIM is not being employed as a professional under section 327(a) of the Bankruptcy Code, it nonetheless has disclosed any connections with the Debtors, their creditors and other parties in interest in the Allison Affidavit. To the best of the Debtors' knowledge and as set forth in the accompanying Allison Affidavit, MFIM has no connection with the Debtors, its creditors, equity holders or any other parties in interest except as has been disclosed therein.

13. MFIM intends to apply to this Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and Orders of this Court. Subject to this Court's approval, the Debtors propose to pay MFIM at MFIM's customary hourly rates in effect from time to time as set forth in the Allison Affidavit and as may be directed by Court order, and submits that such rates are reasonable.

14. Prior to the Petition Date, MFIM received payment of \$400,000, which included a \$150,000 retainer as security for post-petition services rendered by MFIM. MFIM shall apply such retainer to its allowed final compensation and expense reimbursement and return any unused portion to the Debtors. MFIM has applied the remaining \$250,000 to pre-petition services. In addition to the fees and retainer, the Debtors paid an insurance premium in the amount of \$550,000 to obtain directors' & officers' liability coverage for Allison in his capacity as CRO. All fees paid to MFIM were paid by the USACM, one of the Debtors.

15. As a condition to MFIM's employment, MFIM and the CRO have requested, and the Debtors have agreed, to indemnify and hold harmless the CRO, the Temporary Employees and MFIM and its shareholders, affiliates, principals, members, managers, officers, directors, employees, subcontractors, attorneys, professionals, representatives and agents against any and all losses, claims, damages, liabilities, penalties, obligations and expenses, including, without limitation, the costs and expenses for counsel and others (including employees of MFIM), based on their then current hourly billing rates in investigating, preparing or defending any action or

1 claim, all as set forth in detail in the Indemnification Agreement attached to the Allison Affidavit  
 2 as Exhibit A. Accordingly, the Debtors request that the Indemnification Agreement be  
 3 specifically approved as a condition to MFIM's, the CRO's and the Temporary Employees'  
 4 employment in this case (the "Indemnity").

5 16. The Indemnity specifically excludes and does not apply to any loss, claim damage,  
 6 liability or expense to the extent it is found in a final judgment by a court of competent jurisdiction  
 7 to have resulted primarily from gross negligence or willful misconduct. On information and  
 8 belief, the Indemnity is customary in matters such as the proposed engagement, and moreover,  
 9 with respect to the CRO, the Indemnity is backed by a director and officer liability insurance  
 10 policy.

12 17. Accordingly, the Debtors submit that the Indemnity is a reasonable term and  
 13 condition of MFIM's engagement, and appropriate in light of the cost of comparable services in a  
 14 non-bankruptcy context. *See In re Busy Beaver Building Ctrs., Inc.*, 19 F. 3d 833, 848-849 (3d  
 15 Cir. 1994). Unlike the market for other professionals that a debtor may retain, indemnification is a  
 16 standard term of the market for chief restructuring officers, investment bankers and financial  
 17 advisors. In fact, the Indemnity is comparable to those generally obtained by chief restructuring  
 18 officers, financial advisory and investment banking firms and for comparable engagements, both  
 19 in and out of court. *See In re Ground Round, Inc. et al.*, Jointly Administered under Case No. 04-  
 20 11235 (WCH) (D. Mass. March 4, 2004); *In re United Artists Theatre Company et al.*, Case No.  
 21 00-3514 (SLR) (D. Del. November 14, 2000), appeal pending; *In re AmeriServe Food  
 22 Distribution, Inc.*, Case No. 00-0358 (PJW) (Bank. D. Del. May 9, 2000); and *In re Planet  
 23 Hollywood International Inc.*, Case No. 99-3612 (JJF) (Bankr. Del. Dec. 17, 1999).

26 18. The Debtors respectfully submit that the terms of the Agreement are reasonable and  
 27 based on the customary compensation charged by MFIM and comparably skilled practitioners like  
 28

1 MFIM and Mr. Allison in matters outside and other than Chapter 11 cases, as well as cases under  
2 Chapter 11, and have been approved and implemented in Chapter 11 cases in this jurisdiction as  
3 well as other jurisdictions.

4 **NOTICE AND PRIOR MOTIONS**

5 19. Notice of this Motion has been given to the Office of the United States Trustee for  
6 the District of Nevada, the Debtors' twenty largest unsecured creditors as identified in its Chapter  
7 11 petition, its secured creditors and those parties and entities who have requested receipt of  
8 pleadings in this case pursuant to Fed. R. Bankr. P. 2002. In light of the nature of the relief  
9 requested herein, the Debtors submit that no further notice of the Motion is necessary or required.

10 20. No previous request for the relief sought herein has been made to this or any other  
11 court.

12 WHEREFORE, the Debtors respectfully request entry of an order (a) granting it authority  
13 to retain and employ MFIM, effective as of the petition date, pursuant to the Agreement and as set  
14 forth herein, (b) approving each and every term of the Agreement and (c) granting such other and  
15 further relief as this Court deems just and proper

16 Dated:

17 USA COMMERCIAL MORTGAGE COMPANY  
18 USA CAPITAL REALTY ADVISORS, LLC  
19 USA SECURITIES, LLC  
20 USA CAPITAL FIRST TRUST DEED FUND, LLC  
21 USA DIVERSIFIED TRUST DEED FUND, LLC

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25 By: \_\_\_\_\_  
26 Name: Joseph D. Milanowski  
27 Title: President-USA Commercial Mortgage  
28 Company

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11 Proposed Attorney for Debtors

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